

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 75-1243

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

GREGORY CHU, T/N DONALD GEE,

Defendant-Appellant.

----- x

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JOINT APPENDIX

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

WARNER AND GILLERS, P.C.  
500 Fifth Avenue  
New York, New York 10036  
(212) 354-5454  
Attorneys for Defendant-Appellant

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for Plaintiff-Appellee

PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE TULLACH

73 CRIM 93

D. C. Form No. 100 Rev.

JUDGE BAUMAN

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: 264-6562
vs.	Barbara Ann Rowan, AUSA
1) BARRY H. COHEN	
2) JOHN DOE, a/k/a Gregory Chu.	
2-26-74 True Name DONALD GEE	
	For Defendant:

STATISTICAL RECORD	COSTS	...	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk					
J.S. 3 mailed 1-2	Marshal					
Violation	Docket fee					
Title 21	.....	.....				
Sec. 812, 811(a)(1), 811(b)(1)(A)						
distribute and possess with						
intent to distribute heroin, I.						
One count						

DATE	PROCEEDINGS
1-25-73	Filed indictment - B/W ordered for John Doe B/W issued.
2-5-73	All matters adj. to 2-13-73 -- Tyler, J.
2-13-73	B.H. Cohen- Deft. (Atty. present) pleads not guilty. Bail continued at \$1,000. P.M.B. Secured by \$100.00 Doe, a/k/a Gregory Chu- no appearance - Court directs entry of not guilty plea. Case assigned to Judge Bauman. --- Stewart, J.
2-26-73	Barry Cohen-Filed notice of appearance by Atty Joseph A. Notaro 401 Broadway NYC 10013 C266c222x CA-6-1410
3-9-73	B. COHEN - Atty. present, withdraws not guilty plea and PLEADS GUILTY...Pre-sentence report ordered..Bail cont'd pending sentence. Sent. adjd to 4-23-73 at 9:30 a.m. Bauman, J.....

OVER

DATE

PROCEEDINGS

BARRY H. COHEN

4-23-73 Filed Judgment (Atty. present) deft is guilty as charged and convicted as a YOUNG ADULT OFFENDER & is sentenced pursuant to Sec. 5010(d) of Ti. 18 U.S. Code, as extended by Sec. 4209... The deft is committed for imprisonment for a period of THREE YEARS pursuant to Sec. 3651 of Ti. 18, U.S. Code, as amended, with provision deft be confined in a JAIL type institution for a period of THREE MONTHS as provided in the aforesaid Sec. Execution of the remainder of the sentence is suspended and deft is placed on probation for a period of 33 MONTHS, to commence upon expiration of confinement, subject to the standing probation order of this Court. Defendant is cont'd on bail until 10:30 a.m. on April 30, 1973 at which time deft is to surrender to the U.S. Marshal for service of sentence in room 110..... Bauman, J..... Entered 4-25-73-----

5-2-73

*John Doe*

(X) defendant  
( ) co-defendant  
( ) witness  
In all other respects this case is still pending.

6-14-73 BARRY H. COHEN- Filed amended judgment... deft is committed pursuant to Sec. 5010(d) of Ti. 18, U.S.C. as extended by Sec. 4209 of Ti. 18 U.S.C. Deft is committed for 3 years pursuant to 3651 of Ti. 18 as amended, with provisions deft be confined in a Jail type institution for a period of 3 months as provided in the aforesaid section. Execution of the remainder of the sentence is suspended and deft is placed on probation for a period of 33 months, to commence upon expiration of confinement, subject to the standing probation order of this Court. Pursuant to the provision of Ti. 21, Sec. 841, deft is placed on Special Parole for a period of 2 years to run concurrently with probation imposed, this day..... Bauman, J..... Entered 6-18-73-----

7-9-73 BARRY H. COHEN. Filed Commitment & entered return, Deft. Delivered to the Federal Detention Hdqrs., N.Y., N.Y.

7-23-73 BARRY H. COHEN- Filed copy of judgment with marshals ret. deft. delivered to Fed. Detention Hdqrs. 6-14-73.

12-27-73 GREGORY CHU - Filed the following papers received from U.S. Magistrate. Docket Entry Sheet, Indictment Warrant, Disposition Sheet & Notice of appearance. Harold Borg 123-60 83rd Ave. Kew Gardens, N.Y. EO-1-1200.

2-26-74 DONALD GEE - True name of John Doe. B/W Ordered. BAUMAN, J.

2-26-74 DONALD GEE- B/W issued.

7-23-74 BARRY COHEN- Filed the following papers rec'd from Mag. Raby: (Mag. #72-1665)  
Docket Entry Sheet - Criminal Complaint - Warrant of Arrest dtd 11-2-72-  
Disposition Sheet - Appearance Bond in the amount of \$1,000.00 with \$100. deposited as security.

Aug. 9-74 Case reassigned to POLLACK, J. (mn)

8-29-75 Gregory Chu-atty. Stephen Gillers present, true name Donald Gee - jury trial begun before Judge Pollack.

8-30-75 Trial cont'd and concluded. Deft. found guilty. P.S.R. ordered. Sentence 6-27-75. Deft. remanded. Pollack, J.

-cont'd on next page-



DATE	PROCEEDINGS	Date Order Judgment
6-10-75	Filed (Donald Gee) magistrate's orig. papers: docket entry sheet, indictment warrant, SDNY, disposition sheet, appointment of counsel Financial aff. only..	
6-10-75	Filed transcript of record of proceedings, dated 3-9-73.	
6-27-75	DONALD GEE (atty. present) Filed Judgement- deft. is committed to the custody of the Atty. Gen'l. for a period of TEN (10) YEARS. Pursuant to the provisions of T. 21, U.S. Code, Section 841 the deft. is placed on Special Parole for a period of THREE (3) YEARS to commence upon expiration of confinement. Pollack, J. Issued all copies	
6-27-75	Donald Gee- filed notice of appeal from judgment of 6-27-75. mailed copies to U.S. Atty and deft. on 6-30-75.	
6-30-75	Filed transcript of record of proceedings, dated 5-30-75.	
07-03-75	G. Chu- filed remand dated 5-30-75.	
07-03-75	D. Gee (G. Chu) - filed judgment and commitment, deft. delivered to Fed. Det. Hdqtrs. N.Y.C. 6-27-75.	
7-14-75	G. Chu- filed CJA 20 approval for payment of fees of Stephen Sillers, Esq. Pollack, J. issued copies CJA Clerk	
07-16-75	<del>FILED TRANSCRIPT OF RECORD OF PROCEEDINGS, DATED</del> : MAY 29 AND 30-75; JUNE 27-75.	





73 CRIM. 93

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

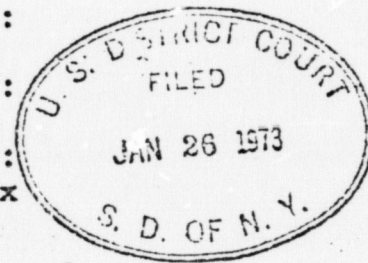
-v-

BARRY H. COHEN and  
JOHN DOE, a/k/a "Gregory Chu"  
described as an oriental male, 25  
years old, 5'8" to 5'10" tall,  
heavy build, black hair, eyeglasses

Defendants .

INDICTMENT

72 Cr.



The Grand Jury charges:

On or about the 30th day of August, 1972  
in the Southern District of New York

BARRY H. COHEN and JOHN DOE  
a/k/a "Gregory Chu"

the defendants , unlawfully, intentionally and knowingly  
did distribute and possess with intent to distribute a  
Schedule I narcotic drug controlled substance, to wit,  
approximately 26.80 grams of heroin.

A4



(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A).) (Title 18,  
United States Code, Section 2.)

Seymour Hull  
Foreman

Whitney North Seymour, Jr.  
WHITNEY NORTH SEYMOUR, JR.  
United States Attorney

A TRUE COPY  
RAYMOND F. BURGHARDT, Clerk

By M. Smith  
Deputy Clerk

(1)

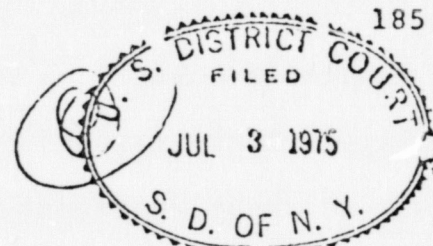
A4 b

73 Cr. 93  
USA vs 1  
Gregory Chu  
T/N Donald GEE2  
5/30/75  
J. Pollack 3

GW 1

CHARGE OF THE COURT

(Pollack, J.)



4 Ladies and gentlemen of the jury, through the  
5 arguments of the respective counsel you have learned the  
6 conclusion which each party believes should be drawn from  
7 the evidence presented to you. You must remember, however,  
8 that the statements of counsel are not evidence and are not  
9 to be considered as such.

10 It is your recollection of the facts that counts  
11 here. It is for you to determine the weight that will be  
12 given to the evidence, the credibility that you will extend  
13 to the witnesses who testified, and the reasonable infer-  
14 ences that are to be drawn from the evidence that has been  
15 received.

16 In order to return a verdict of not guilty or  
17 guilty in this case, the verdict must be unanimous. Each  
18 juror must agree to it.

19 It is your exclusive function to determine the  
20 facts on the basis of your consideration of the evidence.  
21 It is your duty to accept my instructions as to the law to  
22 be followed in the case. You will then apply these instruc-  
23 tions to the facts as you find them and decide whether or  
24 not the defendant on trial before you is guilty of the  
25 charges that have been made against him. When you go into



GW 2

6 180

the jury box you don't check your common sense outside. Use your common sense.

No inference of guilt or innocence of the defendant on trial or as to the credibility of any witness should be drawn from any rulings or comments that I may have made during the trial. It is neither my intention nor my function to favor one side or the other, or to imply that I have any views as to the credibility of either the witnesses or the guilt or innocence of the defendant. That is your exclusive function.

The defendant pleaded not guilty to the indictment. That means that the government has the burden of proving guilt beyond a reasonable doubt with respect to each element of the crime that the defendant is accused of having committed.

The defendant, in our courts, does not have to prove his innocence. He does not have to submit any evidence on the subject of his innocence or any evidence at all if he does not want. A defendant is presumed to be innocent and that presumption continues throughout the trial and right through your deliberations. It is only overcome when you have determined on the basis of your resolution of facts that guilt was established beyond a reasonable doubt on each element of the crime charged.

1 GW 3

2 The defendant did not testify in his own behalf,  
3 and our law says that the defendant may or may not take  
4 the stand. The fact that a defendant did not testify  
5 cannot be considered by you as any evidence against him or  
6 form a basis for any presumption or inference unfavorable  
7 to him. You must not permit such fact to weigh in the  
8 slightest degree against such a defendant, nor should it  
9 enter into your discussions or deliberations.

10 Now, reasonable doubt doesn't mean just any doubt.  
11 It means a doubt which is sufficient to cause a prudent  
12 person to hesitate to act in a matter of importance to  
13 himself or herself.

14 If the evidence which you believe is such as  
15 would induce a prudent person to act without hesitation  
16 in a matter of importance to himself or herself, then you  
17 may say you have been convinced beyond a reasonable doubt.

18 Speculative ideas or possibilities resting upon  
19 mere conjecture, not arising or deducible from the proof,  
20 should not be confused with reasonable doubt.

21 A doubt suggested by the ingenuity of counsel  
22 or even your own ingenuity, not legitimately warranted by  
23 the evidence or the want of it, is not what is meant by  
24 reasonable doubt. You must look at the facts as the guide  
25 for decision and not your or someone else's fanciful  
notions.

A7



1 GW 4

2 If, on the other hand, your mind is wavering or  
3 uncertain to the point where you have a doubt that would  
4 cause a prudent person to hesitate in a matter of importance  
5 to him or her, then you have not been convinced beyond  
6 a reasonable doubt.

7 As I have stated, you are going to have to rely  
8 in this case on your own common sense and general experience  
9 in evaluating the evidence. You must make your own evalua-  
10 tion of the evidence, including the testimony given by  
11 each of the witnesses, and determine the credibility which  
12 you choose to give to such evidence.

13 In weighing the testimony of the witnesses, you  
14 can consider any relationship that they may have to the  
15 government or to the defendant, if any, and any interest  
16 that they may have in the outcome of the case, and any  
17 bias that they may have shown, the witness' manner while  
18 testifying, that is, the witness' candor, intelligence,  
19 whether the witness equivocated or whether the witness was  
20 frank and straightforward, the extent to which the witness  
21 has been corroborated or contradicted by other evidence,  
22 credible evidence, or circumstances or inconsistencies  
23 within the testimony.

24 There has been testimony before you with respect  
25 to the use by the narcotic agents of the services of an

1 GW 5

2 informant or informer. Whatever you think of informers --  
3 that's Colombo -- whatever I think of informers, the govern-  
4 ment uses them in order to get leads to those violating  
5 the law. Whether you or I disapprove of that is really  
6 beside the point, provided that such services in no wise  
7 infringe upon the rights of the defendant, because the use  
8 of such services is not forbidden by the law. You are  
9 not being asked to determine whether or not you agree with  
10 the policy endorsing the use of informants.

11 Putting it another way, if you are satisfied  
12 beyond a reasonable doubt as I have already defined reason-  
13 able doubt to you, that on the date and at the place with  
14 which we are concerned the defendant Chu or Gee, whichever  
15 way he is to be called, committed the offenses charged  
16 in this indictment, then you must find him guilty, even  
17 though you believe his apprehension came about in some  
18 measure by the government availing itself of the services  
19 of the informant.

20 The government called Barry Cohen as an alleged  
21 accomplice to testify as a witness at trial. If you find  
22 that he was an accomplice, he does not become incompetent  
23 as a witness because of his participation in the criminal  
24 acts charged. On the contrary, if the only evidence on  
25 some or all of the essential elements of the charge is the



1 GW6

2 testimony of an accomplice, it may still be of sufficient  
3 weight, if you believe it, to sustain a verdict of guilty  
4 without corroboration. Yet bear in mind that accomplice  
5 testimony is to be received with caution and weighed with  
6 care. You should not convict on unsupported accomplice  
7 testimony unless you believe that testimony beyond a reason-  
8 able doubt.

9 It is the universal rule in the federal courts  
10 that a defendant can be convicted on the uncorroborated  
11 testimony of one whom the jury finds beyond a reasonable  
12 doubt to have been an accomplice.

13 Evidence that a witness has been convicted in  
14 the past of crime may be considered by you in determining  
15 that witness' credibility. By this I mean you may consider  
16 the prior conviction in determining that witness' worthiness  
17 of belief.

18 If you believe a witness has testified falsely  
19 before you, you are privileged to disregard his or her  
20 testimony or you may accept so much as you believe. A man  
21 or woman may be lying about part of what he or she says  
22 and may be telling the truth about all other parts. He  
23 or she may be mistaken about parts and be accurate as to  
24 other parts. It is for you to decide after you have  
25 scrutinized the evidence and weighed the demeanor of the

1 GW7

2 witnesses.

3 The law recognizes two types of evidence, direct  
4 and circumstantial, either of which may be sufficient to  
5 convict, providing the jury upon all the evidence is  
6 satisfied beyond a reasonable doubt.

7 Direct evidence, of course, is that kind of evi-  
8 dence where a witness was present at a conversation or  
9 the commission of an act and testifies to what he or she  
10 saw or what he or she heard or discovered, what he or she  
11 knows of his own or her own knowledge, something which  
12 comes to him by virtue of the senses of sight or sound or  
13 smell, or something which appears in writing signed by the  
14 witness.

15 Circumstantial evidence is, as I think most of  
16 you know, evidence that tends to lead one's mind to conclude  
17 a fact in issue actually exists. Circumstantial evidence  
18 should not be given any less weight because it is circum-  
19 stantial evidence rather than direct.

20 A simple illustration of circumstantial evidence  
21 which we frequently give to juries is as follows: Suppose  
22 at the time when you came into this court this morning the  
23 sun was shining, as it was, and there were no clouds in  
24 the sky and that when you came into this trial courtroom  
25 the shades were drawn and the blinds were down so that



1 GW8

2 you couldn't see outside, yet pretty soon someone came in  
3 the doorway with a dripping umbrella and a dripping rain-  
4 coat. You haven't been outside in the meantime. When you  
5 left outside it was clear, but when these people came in  
6 with their dripping umbrellas and raincoats something may  
7 have happened outside. You would be entitled to infer from  
8 the circumstance that there is a dripping umbrella and a  
9 raincoat that it is raining outside. Thus, circumstantially  
10 you infer from a fact, the dripping raincoat and umbrella,  
11 some other matter, the rain outside.

12 That will give you an illustration of what cir-  
13 cumstantial evidence is and what it may lead to.

14 The indictment in this case named two defendants.  
15 Only one, Donald Gee, also known as Gregory Chu, is on  
16 trial before you at this trial. He is the only person whom  
17 you will find to be guilty or not guilty in your verdict,  
18 although, as I will explain to you shortly, in considering  
19 whether he is guilty or not guilty you may have to determine  
20 the nature of the participation, if any, of Barry Cohen,  
21 the other defendant, in this case.

22 In the determination whether the defendant is  
23 guilty or not guilty, you must bear in mind that guilt is  
24 personal. Whether the defendant on trial before you is  
25 guilty or not guilty must be determined separately with

1 GW9

2 respect to him solely on the evidence presented against  
3 him or the lack of evidence. The case as to this defendant  
4 stands or falls on the proof or lack of proof of the charge  
5 against him and not against somebody else. Therefore, the  
6 fact that the other defendant named in the indictment  
7 pleaded guilty and is not before you for consideration at  
8 this time is not evidence of the guilt of the defendant  
9 on trial, or that the crime charged against Gee or Chu  
10 was committed by him.

11 The plea of guilty by another defendant may not  
12 be considered by you as evidence against the defendant Gee  
13 or Chu in any respect, nor may any adverse inference be  
14 drawn against the defendant by reason thereof.

15 An indictment is not evidence. It is merely an  
16 accusation.

17 The indictment in this case reads as follows:

18 "The Grand Jury charges that:

19 "On or about the 30th day of August, 1972, in  
20 the Southern District of New York, Barry H. Cohen and  
21 Gregory Chu or Gee, the defendants, unlawfully, intention-  
22 ally and knowingly did distribute and possess with intent  
23 to distribute a Schedule I narcotic drug controlled sub-  
24 stance, to wit, approximately 26.80 grams of heroin."

25 The indictment charges Cohen and Chu or Gee, the



1 GW10

2 defendants, with violating the federal narcotic laws. The  
3 part of this law which is applicable to the charge here is  
4 called the Controlled Substances Act which became effective  
5 on May 1, 1971.

6 The term "controlled substances" is used in the  
7 Act to refer to any drug included in one of five schedules  
8 contained in the Controlled Substances Act. Heroin is  
9 included in Schedule I.

10 Among other things, it is made unlawful for any  
11 person knowingly or intentionally to distribute or possess  
12 with intent to distribute any controlled substance such as  
13 heroin.

14 Finally, Section 2 of Title 18 of the United  
15 States Code provides in pertinent part:

16 "Whoever commits an offense against the United  
17 States or aids, abets, counsels, commands, induces or  
18 procures its commission, is punishable as a principal."

19 As I indicated, the indictment charges Cohen  
20 and Chu, the defendants, with the distribution and possession  
21 with intent to distribute 26.80 grams of heroin. Before  
22 you can find Chu guilty of the crime charged in this  
23 indictment, you must be convinced beyond a reasonable doubt  
24 that the government has proved the following elements:

25 First, that on or about August 30, 1972, Donald

1 GW11

2 Gee or Chu, the defendant named in this indictment, did  
3 distribute and possess with intent to distribute a narcotic  
4 drug controlled substance.

5 Second, that he did so unlawfully, wilfully  
6 and knowingly.

7 Third, that the 26.80 grams of substance charged  
8 to have been distributed is in fact heroin, a Schedule I  
9 narcotic drug controlled substance.

10 You will note that the first element of the  
11 offense is possession with intent to distribute the drug.  
12 The word "distribute" means the actual, constructive or  
13 attempted transfer of the drug.

14 The word "possession" has its common everyday  
15 meaning, that is, to gain or exert influence or control  
16 over. It should be obvious that to have something within  
17 your control does not necessarily mean that you have it  
18 in your hand or your pocket. For example, control may  
19 be demonstrated by the existence of a working relationship  
20 between the person having such control and the person with  
21 the actual physical custody.

22 The word "intent" refers to a person's state of  
23 mind. Therefore, the term "possession with intent to  
24 distribute" can be fairly stated to mean to have control  
25 over an item with the purpose that the item be transferred.



1  
2 On this element, the government contends that  
3 it has proved beyond a reasonable doubt that the defendant  
4 Gee or Chu knowingly transferred the drug to the defendant  
5 Cohen to be transferred to Investigator Visciarelli and  
6 that Gee or Chu possessed the drug, and that at the time  
7 Gee or Chu possessed the heroin his mental state was such  
8 that he would transfer it to someone else.

9 If you find beyond a reasonable doubt that such  
10 a transfer was made, I charge you that such a transfer  
11 satisfies this first element.

12 The defendant's position on this element is that  
13 the evidence shows nothing more than that he accompanied  
14 Barry Cohen to a site where Cohen made a drug sale for  
15 his own gain. Donald Gee contends that Barry Cohen's  
16 testimony that Gee was the source of the heroin is not  
17 credible.

18 As to the second element, the terms "unlawfully,"  
19 "wilfully" and "knowingly" mean that you must be satis-  
20 fied beyond a reasonable doubt that the defendant knew what  
21 he was doing and that he did it deliberately and voluntarily  
22 as opposed to mistakenly or accidentally or as a result  
23 of some coercion. Of course, it is not necessary in order  
24 to demonstrate that the defendant acted unlawfully,  
25 wilfully and knowingly that the defendant knew he was

1 GW13

2 violating particular sections of the Controlled Substances  
3 Act. Rather, it is sufficient if you are convinced beyond  
4 a reasonable doubt that Chu or Gee was aware of the  
5 general unlawful nature of his acts. You must also believe  
6 beyond a reasonable doubt that he knew that Cohen was  
7 delivering heroin to the buyer.

8 Knowledge and intent exist in the mind. Since  
9 it is not possible to look into a man's mind, into Gee's  
10 mind, to see what went on, the only way you have for  
11 arriving at a decision as to his knowledge and intent is  
12 for you to take into consideration all the facts and circum-  
13 stances shown by the evidence, including the exhibits, and  
14 to determine from all such facts and circumstances whether  
15 the requisite knowledge and intent were present at the time  
16 in question. Direct proof is unnecessary. Gee's knowledge  
17 and intent may be inferred from all the surrounding cir-  
18 cumstances.

19 You may consider, in determining whether the  
20 defendant acted with guilty knowledge or intent, the fact,  
21 if you find it true, that the defendant engaged in another  
22 transaction similar to that charged in the indictment.  
23 Such evidence is not allowed to show bad character or  
24 criminal disposition but only bears on the question of  
25 the motive and intent of the alleged connection, if any,



of the defendant with the transaction charged in the indictment.

As to the third element, the indictment charges that the narcotic drug controlled substance is heroin. I instruct you as a matter of law that heroin is a narcotic drug controlled substance. However, you must be convinced beyond a reasonable doubt that the narcotic drug controlled substance charged to have been distributed was heroin. The government contends that 26.8 grams of heroin was distributed by defendants Cohen and Gee on August 30, 1972.

The government has introduced a stipulation between the government and defense counsel that, if called, a chemist would testify that the substance covered in this indictment, by weight approximately 26.8 grams, was heroin.

Finally, it is not necessary for the government to show that a defendant physically committed the crime himself. The code of the United States provides that a person who aids and abets another to commit an offense is just as guilty of that offense as if he committed it himself. Accordingly, you may find defendant Gee guilty of the offense charged in this indictment if you find beyond a reasonable doubt that defendant Cohen committed the offense as charged and defendant Gee aided

LOCKWOOD, KESSLER & BARTLETT, INC.  
CONSULTING ENGINEERS

## TRANSMITTAL SHEET

TO: Lusciano Construction Corp.  
2023 Central Park Ave.  
Yonkers, New York 10710

DATE: May 22 1969

ATT: Mr. S. Lewis

JOB: C 68-6, RC 68-70

- ☐ FIRST CLASS MAIL  
☐ PARCEL POST - SPECIAL HANDLING  
☒ MESSENGER  
☐  
☐  
☐

- ☐ ORIGINAL TRACINGS  
☐ SHOP DRAWINGS  
☐ PRINTS  
☐ SPECIFICATIONS  
☐ CHANGE ORDERS  
☐  
☒ Sketches

NO.	NO. OF COPIES	DOCUMENT NO.	DESCRIPTION	REMARKS
1	3	FC-26	Modification to san. sewer svs. at Sta. 118+15.4	
2	3	FC-27	Modification to san. sewer svs. north of Malrose Ave., E. side CPA	
3				
4				
5				
6				
7				

ADDITIONAL COMMENT FC 26 - Copies of this sketch previously handed to Mr. S. Lewis  
at 10:00 A.M., 5/22/69. - Modif. nec. to elim. conflict betw. exist. house  
sve. & new 24" RCP storm drain.  
FC-27 - To elim. conflict betw. exist. house svs. & new 48" RCP  
storm drain.

COPIES TO: (w/enc.)

G. Greenstade

RCC Main Off.

File(2)

- ☐ AS REQUESTED BY YOU  
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LOCKWOOD, KESSLER & BARTLETT, INC.  
CONSULTING ENGINEERS

1 AERIAL WAY - SYOSSET, N.Y.

BY:

*James L. Lewis*  
Resident Engineer

TELEPHONE: WE11s 8-0600

4-87



2 and abetted him.

3 In order to aid and abet another to commit a  
4 crime, it is necessary that a defendant in some sort  
5 associated himself with the venture, that he participate  
6 in it as in something that he wishes to bring about, that  
7 he seek by his action to make it succeed. Knowledge that  
8 a crime is being committed, even when coupled with  
9 presence at the scene, is not enough to constitute aiding  
10 and abetting. Rather, it is required that an individual  
11 promote the venture himself, make it his own, have a stake  
12 in its outcome.

13 Mere presence in the area where a controlled  
14 substance drug is discovered or the mere association where  
15 the person who controls the drug or the property where it  
16 is located is insufficient to support a finding of  
17 possession.

18 If you should find that the law has not been  
19 violated, you should not hesitate to return a verdict  
20 of not guilty. On the other hand, if you should find  
21 beyond a reasonable doubt that the law has been violated  
22 as charged, you should not hesitate to render a verdict  
23 of guilty.

24 The most important part of this case is the  
25 part which you now as jurors are about to perform, because

1 GW16

2 it is for you and you alone to decide whether the defendant  
3 is guilty or not guilty of the crime charged. I know  
4 you will decide the issues that have been presented to you  
5 according to the oath that you have taken as jurors in  
6 which you promised, as you recall, that you will well  
7 and truly try the issues joined in this case and a true  
8 verdict render.

9 If, after considering all the evidence and argu-  
10 ments of your fellow jurors, you entertain a conscientious  
11 view that differs from others, you are not to yield your  
12 conviction simply because you are outnumbered or outweighed.

13 Your final vote on the charge must be unanimous  
14 and must reflect your conscientious conviction as to how  
15 the issues should be decided.

16 If in the course of your deliberations you require  
17 any exhibits or wish to hear any testimony, you may send  
18 out a note which will be signed by your foreperson, Mrs.  
19 Hagler, and you will be provided with paper and pencil  
20 for that purpose and they will be sent in to you or given  
21 to you or the testimony will be read, whatever the case  
22 may be.

23 If you will bear with me for just a minute, I  
24 will talk to the lawyers, who may wish to call to my  
25 attention something on which I may have misspoken or omitted.



Gentlemen, come up.

(At side bar.)

THE COURT: Are there any exceptions or requests on the part of the defense?

MR. GILLERS: No exceptions.

The only request is as to the prior similar act.

THE COURT: I thought I would put my response to that in the record.

The defendant called the witness Colombo to establish that Cohen, in contract to his testimony on cross examination that the transaction charged in this case was an isolated one, in fact had prolix transactions with Colombo in narcotics. This was allowed not as an attack merely on Cohen's credibility but as going to Cohen's bias and motive. However, it appeared on cross examination that one of the prolix transactions brought out on Colombo's direct examination by defendant was in fact a narcotic transaction in which Chu, Cohen and Colombo participated. The proof that identified one of the prolix transactions as one with Chu was allowed as going to Chu's motive and intent in respect to the transaction charged in the indictment. The door was opened by the defendant to this explanation by calling forth on direct examination of the witness that Cohen had prolix transactions with Colombo. The

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2 evidence bore on the determination whether defendant acted  
3 with guilty knowledge and intent in respect to the trans-  
4 action charged in the indictment.

5 A limiting instruction requested by the government  
6 limited the significance of the evidence only to the ques-  
7 tion of the guilty knowledge and intent of defendant and  
8 not to show bad character or criminal disposition.

9 Accordingly, I allowed the evidence and so  
10 charged the jury, with exception to the defendant.

11 There are no exceptions or requests on the part  
12 of the government?

13 MR. FLANNERY: That is correct.

14 (In open court.)

15 THE COURT: The two alternates are now excused  
16 from further participation in this case in view of the  
17 fact that we have all jurors present and accounted for.  
18 Report back Monday morning to Room 109 at 9:00 o'clock  
19 for further jury service. You may go out. That is Miss  
20 DeJesus and Mrs. Jeffers.

21 The marshals will be instructed to see that the  
22 jury is provided with lunch. I want to call to your  
23 attention the fact that it has just begun to rain. If  
24 the jury prefers to have lunch in, you can signify that  
25 with the marshals and they will send out for it. Of



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